

Appl. No. 10/764,215
Docket No. P142M
Amdt. Dated July 8, 2009
Reply to Office Action mailed on February 11, 2009
Customer No. 27752

REMARKS

Claim Status

Claims 1 – 4 and 6 – 17 are pending in the present application. No additional claims fee is believed to be due. Claims 10 – 17 have been withdrawn as a result of an earlier restriction requirement.

Rejection Under 35 U.S.C. § 102 Over Oliveira

Claims 1 – 4 and 6 – 9 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Oliveira et al. (US Publication No. 2003/0157239)(“Oliveira”). Applicants respectfully traverse this rejection.

Claim 1 is directed to, *inter alia*, a composition comprising astaxanthin wherein the composition is adapted for use by a companion animal and wherein the composition is selected from the group consisting of dog food compositions, cat food compositions and combinations thereof and wherein the companion animal is selected from the group consisting of dogs and cats.

Oliveira discloses that a:

High protein, low soluble-sugar, oil containing soybean meal suitable for use as a partial or full replacement of fish meal and other protein and energy sources in the manufacture of fish and land animal feeds and petfoods, is produced by a process in which oil is mechanically extracted from dehulled, flaked soybeans.

Abstract. Oliveira, however, fails to teach each and every element of the claims.

Oliveira discloses that the “*soybean meal* of this invention also is useful as a protein and energy source in other manufactured animal feeds, particularly for carnivores and omnivores, for example, shrimp, piglets, calves and pet animal (for example, cats and dogs).” Para [0040] (emphasis added). The Office Action states that the soybean meal of Oliveira comprises astaxanthin. Applicants respectfully disagree with the Office’s characterization of the soybean meal of Oliveira. As best understood by Applicants, Oliveira fails to put forth any disclosure that the soybean is a source of astaxanthin. Additionally, as best understood by Applicants, Oliveira fails to put forth any disclosure

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that astaxanthin is supplemented to the soybean meal. A search of the Oliveira reference reveals that the word "astaxanthin" appears in two locations: in a comment regarding superscript number 1 in Table 1 and in a listing of nutrient compositions in Table 2. As best understood by Applicants, neither location of the word "astaxanthin" in the Oliveira reference indicates that the soybean meal is the source of the astaxanthin. Tables 1 and 2 are both contained within Example 2 of Oliveira wherein the diets of Example 1 are fed to Atlantic Salmon. As best understood by Applicants, therefore, Oliveira fails to disclose that the soybean meal comprises astaxanthin and while Oliveira may disclose that the soybean meal may be fed to dogs and cats, the only disclosure with regards to a composition comprising astaxanthin is in fish diets fed to Atlantic Salmon. Example 2. As best understood by Applicants, therefore, Oliveira fails to teach a composition comprising astaxanthin, wherein the composition is selected from the group consisting of dog food compositions, cat food compositions and combinations thereof and wherein the companion animal is selected from the group consisting of dogs and cats. Oliveira, therefore, fails to anticipate the claims. Applicants respectfully request reconsideration and withdrawal of the rejection.

Conclusion

This response represents an earnest effort to place the present application in proper form and to distinguish the invention as claimed from the applied reference. In view of the foregoing, reconsideration of this application and allowance of the pending claims are respectfully requested.

Respectfully submitted,

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